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IN THE

SUPREME COURT OF THE UNITED STATES

No. 141.

JEANNE S. WEED and SALLY ANNE DeLUCCIA,
Petitioners,

vs.

EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,
Respondent.

CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE FIFTH CIRCUIT.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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In order to assist the Court and for reasons of clarity, we shall refer to Petitioners as Plaintiffs and Respondent as Defendant.

In Rule 23, 28 U.S.C.A., we find clearly stated what a Petition for Writ of Certiorari shall contain and one of the most important requirements is contained in Paragraph 1 (h) of said Rule which reads as follows:

"A direct and concise argument amplifying the reasons relied on for the allowance of the writ. See Rule 19."

Rule 19 referred to above sets out the considerations governing review on Certiorari and while said Rule makes it clear that the considerations listed are not controlling nor fully measure the Court's discretion, it does indicate the character of reasons which will be considered. This same rule points out that a review on Writ of Certiorari is not a matter of right, but of judicial discretion and will be granted only where there are special and important reasons therefor. Nowhere in Plaintiffs' Brief can we find any reason or consideration remotely connected with or reflecting the character of those set forth in Rule 19 for this Court to grant the request of the Petitioners. Furthermore, there is not an attempt on the Plaintiffs' part to present a reason.

Not only is this basic requirement missing but in explaining the importance of granting the Writ of Certiorari, Plaintiffs make it only too evident that the factual situation presented to the Court has never come up before in a reported case and a cursory reading of the Amended Complaint will explain why it never will again. Plaintiffs are attempting to overcome this fatal deficiency in their Brief by a passionate appeal to this Court based on an illusion that there exists equities against the Defendant when, in fact, the opposite is true. But even assuming that equities did exist, it would be no reason for Plaintiffs to have this Court promulgate a rule of law which would disrupt and confuse existing sound and long established basic principles of legal jurisprudence and otherwise prove again the wisdom of the maxim "hard cases make bad law."

Furthermore, Plaintiffs' Brief did not properly nor completely reflect the entire factual situation and for this reason, the Defendant shall present in chronological order a statement of the important facts found in Plaintiffs' Complaint and Amended Complaint.

STATEMENT OF THE CASE.

In December of 1947 and February of 1948, George E. Stevens purchased three insurance policies from the defendant insurance company and had the beneficiary thereof designated as his wife, Louella H. Stevens.

Sometime after the issuance of said policies, the insured's mental and physical health began to fail him and on September 26, 1951, the insured was adjudged mentally incompetent. Later that same year the Court adjudged that the insured was competent. No allegation appears in either the original or amended Complaint that the defendant insurance company was ever informed of the above proceedings. On November 22, 1952, after having been restored to competency, the insured executed a request for change of beneficiary, again naming as beneficiary his wife, Louella H. Stevens, if living at the death of the insured and if not living, then in equal shares to two of his daughters. Colvin Georgeanne Stevens and Diana Jane Stevens. Neither of these contingent beneficiaries are Plaintiffs herein. The Plaintiffs are two other daughters of the insured by a former marriage. It is noted that no change was made or attempted to be made to change the primary beneficiary from the beneficiary named in the original application for the policy.

On April 15, 1953, George E. Stevens was adjudged mentally incompetent and the First National Bank of Leesburg, Florida, was appointed his guardian, and proceeded

to take active steps to administer his property. Again it should be noted that neither Complaint alleges that the defendant insurance company was ever informed of any of the above proceedings.

On November 4, 1953, the First National Bank of Leesburg, as said guardian, instituted an action against Louella H. Stevens and others for the purpose of requiring Mrs. Stevens to account for all the property of the insured. The proceeding was settled by agreement of the parties with approval of the Court. It was not alleged in the Complaint or Amended Complaint that the defendant insurance company was ever informed of the above proceedings.

On July 9, 1954, Louella H. Stevens divorced the insured but there is no allegation in the Complaint that the defendant insurance company was ever notified or knew of said divorce. On May 1, 1955, the insured departed this life and in due course the defendant insurance company paid the beneficiary of record, Louella H. Stevens, the proceeds of the aforementioned insurance policies.

On May 9, 1957, the County Judge's Court in Lake County, Florida, rendered an order revoking the Will of the insured stating that the Court felt that back in September 16, 1952, when said Will was executed, the insured did not possess testamentary capacity to make a Will. Again we note that the Plaintiffs have never alleged that the Defendant knew or was informed of this proceeding.

From the facts as shown by the pleadings, it appears that on the date of insured's death the Defendant was only informed or knew that:

(1) The insured during 1947 and 1948, while mentally competent, had purchased three insurance policies naming Louella H. Stevens, his wife, his beneficiary;

(2) That on November 22, 1952, the insured effected a change of beneficiary, again naming his wife, Louella H. Stevens, as primary beneficiary;

(3) That on May 1, 1955, the insured died without having requested or attempted to again change his beneficiary.

Based on these facts and without notice of other claims, the defendant insurance company in due course paid the policy proceeds to the beneficiary of record, Louella H. Stevens, and thereby performed the contract of insurance.

On or about May 1, 1959, four years after the insured's death and the payment of the proceeds to the beneficiary of record, the Plaintiffs herein filed this suit against the Defendant alleging that one-half of the above proceeds should not be paid to them and *a fortiori* should not have been paid to the beneficiary named in the policies.

The United States District Court for the Southern District of Florida on March 17, 1960, after the affected parties were heard, granted Defendant's Motion to Dismiss with leave for Plaintiffs to amend.

On May 4, 1960, the same Court again, after all the affected parties were heard on Defendant's Motion to Dismiss the Plaintiffs' Amended Complaint, granted said Motion with prejudice, there appearing no request for further amendment.

Plaintiffs appealed to the Court of Appeals for the Fifth Circuit and after all the affected parties filed their Briefs and presented oral argument, said Court on March 27, 1961, affirmed the holding of the lower Court with opinion. Furthermore, Plaintiffs' entire Brief has failed to properly place before this Court material issues that

are presented by this cause and upon which the two lower Courts based their holdings. The first issue is as follows:

ISSUE No. 1.

Where a husband procures a policy of insurance naming his spouse as beneficiary, does a subsequent divorce terminate the beneficiary's right to the proceeds of the life insurance policy or stated differently, where a husband procures a policy of life insurance and designates the beneficiary as "payable to my wife, Louella H. Stevens," does a subsequent divorce decree by operation of law and without notice to insurer effect a change of such beneficiary

The general rule is that where the husband has designated his wife as beneficiary under an ordinary policy of life insurance designating her by her name, or with the additional words, "wife" or "my wife", etc., her interest as beneficiary is not affected by a subsequent divorce.

This general statement is found in a definitive annotation on this subject titled, "Divorce of Insured and Beneficiary as Affected the Latter's Right in Life Insurance," 175 A.L.R. 1224.

It has been contended, but without success, that the word "wife" used in connection with a named beneficiary fixes the status of the beneficiary at the time the proceeds are payable so that a second wife, or a secondary beneficiary, is entitled to the proceeds as against a divorced wife named in the policy. The law is well established in the majority of the jurisdictions that the use of the word "wife" in connection with a named beneficiary is descriptive only; that is, a mere identification of the person, and that the name, but not the description or identification, identifies the person entitled to the proceeds of the policy.

The leading New York case on this question is found in *Slavin* v. *Slavin*, 165 N.Y. App. 362, 151 N.Y. Supp. 60. See also *Overheiser* v. *Overheiser*, 63 Ohio St. Rep. 77, 57 N.E. 965; *Filley* v. *Illinois L. Ins. Co.*, 91 Kan. 220, 137 Pac. 793; *John Hancock Mutual Life* v. *Soluri*, 134 F. Supp. 86 (1955); *Federal Life Insurance Co.* v. *Tietsort et al.*, 131 F.2d 448 (1942); certiorari was denied 318 U.S. 768, 63 S. Ct. 762.

It is almost without exception that the jurisdiction of this country follows the general rule stated above. As a matter of fact, there are only two jurisdictions which have adopted a contrary rule; these are, Kentucky and Texas which rule, the Plaintiffs admit, is a minority holding.

In this connection it should be noted that in the State of Florida (where all the acts took place and where the insured and beneficiary lived), California (where the insured died), and New York (where the contract was issued and performed), the general rule above discussed is followed. *O'Brien* v. *Elders*, 250 F.2d 275 (1957); *Jenkins* v. *Jenkins*, 112 Cal. App. 402, 297 Pac. 56 (1931); *Mayfield* v. *Fidelity and C. Co.*, 16 Cal. App. 611, 61 P.2d 83 (1936); and *Slavin* v. *Slavin*, *supra*

Therefore, it is apparent by the great weight of authority and also by all the states whose laws could possibly be involved in this litigation that where the term "wife" is used in describing a named beneficiary in an insurance contract, it is considered as being descriptive of the person named only, and the person so named is held to be entitled to the proceeds of a life insurance policy unaffected by a subsequent divorce.

ISSUE No. 2.

If a husband procures a life insurance policy designating his wife as beneficiary and subsequently but unknowingly to the insurance company, the insured becomes mentally incompetent and his wife unknowingly to said insurer does thereafter divorce the insured during said mental incompetency, does the law, absent any action to change the beneficiary of record by the insured or his legally appointed guardian, step in without any notice to the insurer and reform the insurance contract ex parte?

If the Court should sweep aside the immaterial from the material, it would find that the Plaintiffs are attempting to have this Court rule that because of certain actions by the beneficiary, all of which were unknown to the Defendant, the insurance contract was automatically reformed by operation of law and without notice to the Defendant and that the insurer by paying the beneficiary of record breached the reformed *ex parte* contract which said insurer did not know existed. Simply stated, Plaintiffs are attempting to effect a change of beneficiary without complying with the terms of the insurance contract and further wants to make said change retroactive as of some period antecedent to the insurer's having paid the beneficiary of record.

At this point it should be noted that there were three periods when the insured or his representatives actively contacted the Defendant and during each of these contacts both parties were competent individuals. The first contact was when the insured purchased said policies and the insured was competent. At this time insured named Louella H. Stevens as his beneficiary. The second contact was when the insured effected a change of beneficiary and

the insured was again judicially sane. He again named Louella H. Stevens as his beneficiary but added contingent beneficiaries. The third contact was at the insured's death and his personal representatives were competent.

Plaintiffs will undoubtedly argue that the insured could not change his beneficiary because of the insured's insanity but this is certainly no excuse because the First National Bank of Leesburg was appointed the insured's guardian and it had knowledge of the insurance policies and therefore could have, if it so desired or felt it was their ward's desire, petitioned the Court for authorization to effect a change of beneficiary. Plaintiffs never alleged in their Complaint that this was ever attempted, and while, for the purpose of a Motion to Dismiss, the Court must assume that everything in the Complaint is true, the Court must also logically assume that the Plaintiffs have alleged in the Complaint every fact which supports their cause. This is especially true in the present situation where the Plaintiffs by their Amended Complaint have evidenced an intent not to sacrifice clarity for brevity.

In Plaintiffs' Brief at Page 14 they state that they cannot assume that the insured intended for his ex-wife to have the insurance proceeds because he did not change the beneficiary by reason of the fact that the insured was mentally incapable to form such an intent. However, the Plaintiffs have no difficulty in assuming that the insured, under the same mental handicap, intended for them to have the proceeds of the policy. Certainly at all times when the record indicates that he was in possession of his faculties, he did nothing insofar as Defendant was advised to signify that he did not intend for the named beneficiary to have the proceeds. Neither can we assume that without any intent or act on his part, brought to the attention of the Defendant, that the contract would be reformed.

We would like to submit to the Court that it is only after the time that Plaintiffs allege the insured became mentally incompetent that the insured evidenced signs of "bitterness" and "murderous intent."

This does not mean that a mentally fit George E. Stevens would not desire his wife to be his beneficiary and the Courts have recognized this when they have consistently found that an insane person may not change the beneficiary of his life insurance policy and that if an incompetent should attempt such a change the original beneficiary may void the change and recover under the policy. 29 Am. Jur., Insurance, §1677 and 46 C.J.S., Insurance, §1175. Furthermore, it should be remembered that during the time the Plaintiffs allege the insured was insane, the insured again made his wife, Louella H. Stevens, the beneficiary of his insurance policy by initiating and perfecting a change on or about November 22, 1952. Perhaps more important than the above affirmative act is the fact that the Plaintiffs have never alleged that the insured actually intended or attempted to specifically change the beneficiary of his life insurance policy in any manner so as to remove Louella H. Stevens from her role as beneficiary nor is there any allegation that the insured, while sane or insane, ever intended or attempted to make the Plaintiffs, Jeanne S. Weed and Sally Anne DeLuccia, the beneficiaries of his insurance policies.

All that either Complaint alleges are certain circumstances from which could be drawn the conclusion that the insured, sane or insane, did not want his wife to have this money. Nevertheless, assuming this to be true, a change signifies a substitution of one person or thing for another person or thing and nothing indicates who the insured wanted to substitute as beneficiary, assuming he did intend to replace his wife. In none of the cases we

have examined have we seen a Court recognize the substitution of a beneficiary without clear indication of whom the insured intended the substitute to be.

Therefore, to summarize the last two points, it can be said that neither the wife's subsequent divorce nor the insured's subsequent insanity could in any way affect the right of the beneficiary named in the insurance policy to collect the proceeds.

ISSUE No. 3.

Does a holding in 1957, years after the proceeds have been paid the beneficiary named in the policy, of lack of testamentary capacity of a testator policyholder in 1952, retroactively invalidate a designation of beneficiary made in the earlier years?

Plaintiffs have argued that since a Court decided that George E. Stevens did not have testamentary capacity to execute a Will on September 16, 1952, that he did not have the mental capacity necessary to execute the request for change of beneficiary on November 22, 1952. The Defendant would like to submit to the Court that it was not determined that the insured lacked testamentary capacity on September 16, 1952, until May 9, 1957, or almost two years after the said defendant insurance company in good faith and without notice of another claim had already paid the beneficiary of record. We point this out to show the Court that the defendant insurance company cannot be bound or held to notice of said judicial determination of insanity for the simple reason that when the time came to pay the proceeds of the insurance policy, there was no such Court decision in existence. The Defendant cannot be expected to know in the year 1955 what some Court might decide in the year 1957, especially when the Plaintiffs have not al-

leged that the Defendant was ever aware of or had reason to know said suit had commenced.

Plaintiffs cannot claim that they did not know of the insured's alleged incapacity because they have stated in their Amended Complaint that shortly after the death of the insured, they instituted the aforesaid action in the Probate Court which resulted in the insured being declared without testamentary capacity on September 16, 1952. Thereupon, upon the face of the Complaint, it is clearly shown that said Plaintiffs sat upon their rights and now should be barred from contending that said request for change of beneficiary is ineffective.

Also we submit to the Court that the change of beneficiary attacked here is not of importance because if it were thrown out, Louella H. Stevens would still have been the beneficiary to receive the proceeds by reason of the original designation in the application for the policies. Furthermore, the change of beneficiary did not name either of the Plaintiffs as contingent beneficiaries but it did name the insured's two other daughters. It is quite clear from the above that if the change of beneficiary was effective and assuming that Louella H. Stevens should not have received said proceeds then the contingent beneficiaries only would have a right to said proceeds and only they can object. *Carter* v. *Carter*, 88 So.2d 153. Therefore, Plaintiffs have no standing to sue.

ISSUE No. 4.

If a life insurance company in good faith, and without knowledge of any reason not to do so, remits to the beneficiary of record the proceeds of a life insurance policy upon due proof of the death of the insured, are they liable a second time to a third person, who with full knowledge of all his rights, sat on his rights and did not notify said insurer of his claim prior to said insurer's paying the beneficiary of record and insofar as the record reflects has never notified said insurance company of his claim by submitting due proof of the death of the insured?

There is no allegation in either the Complaint or the Amended Complaint that the Plaintiffs ever put the insurance company on notice of their claim to said insurance proceeds prior to the insured's death or sent the defendant insurance company due proof of the death of the insured in order to put the defendant insurance company on notice of their claim which is a condition precedent to their receiving said insurance proceeds and bringing an action for said proceeds. There is no allegation that the Plaintiffs ever informed the defendant insurance company of their claim or the basis for their claim to said insurance proceeds prior to the insurance company paying said proceeds to the beneficiary of record, Louella H. Stevens. Insofar as the Complaint and Amended Complaint show, said demand was made on the same date this present action was commenced, on or about May 1, 1959, four years after the death of the insured.

The above brings us to one of the most glaring weaknesses of Plaintiffs' Complaint and illustrates such an important defect that it alone is sufficient to enable the Court to sustain the United States District Court's ruling and

also the ruling of the Court of Appeals for the Fifth Circuit. In Plaintiffs' Complaint, Amended Complaint and Brief submitted, they have alleged ultimate facts, evidentiary matter, conclusions of law and incorporated irrelevant exhibits, etc., all in an attempt to demonstrate and to drive home to this Court that Louella H. Stevens performed acts that were "without parallel for diabolical cunningness and wickedness" and that her actions "had been so heinous and so contrary to what has been considered by all civilization to be proper conduct for a wife and mother" that this Court should not allow Louella H. Stevens to receive the insurance proceeds, but, the simple truth is that Louella H. Stevens has already received the insurance proceeds. The Plaintiffs are not bringing this suit against the "diabolical, cunning and wicked" Louella H. Stevens but are instead suing the Equitable Life Assurance Society of the United States.

Plaintiffs have never alleged in their Complaint or Amended Complaint that the insurance company is guilty of any wrongdoing. Plaintiffs have never alleged that the insurance company knew or had knowledge of any of the "heinous acts" of the beneficiary nor of the divorce. Plaintiffs have never alleged that they took any steps to put the insurance company on guard as to the Plaintiffs' claim to the insurance proceeds prior to the payment by the insurance company to the beneficiary of record.

The Courts have continuously held that payment in good faith to the beneficiary of record by the insurance company without knowledge of facts vitiating their own claim will prevent a second recovery by another claimant. *Daniels* v. *Grand Lodge*, 62 S.W.2d 548; *Avondale* v. *Sovereign Comp. W.O.W.*, 279 N.W. 355 (1938); *Metropolitan Life Insurance Company* v. *Louisville Trust Company*, 89 S.W. 268 (1905); *Renick* v. *Mutual Life Insurance*

Company of New York, 106 S.W. 310 (1907); and 46 C.J.S., Insurance, §1198.

It has been stated that the remedy of the claimant, if any, is against the person who wrongfully collects the proceeds and not against the insurance company. *Avondale* v. *Sovereign Comp. W.O.W., supra; Renick* v. *Mutual Life Insurance Company of New York, supra;* and *Metropolitan Life Insurance Company* v. *Louisville Trust Company, supra.*

For years, our society through the Courts and Legislatures have placed great pressures upon the insurance companies to coerce them to perform their obligations under an insurance policy with the minimum amount of delay. If the Court now holds that a possible claimant may sit upon his alleged rights until after an insurance company, acting in good faith, and without notice or knowledge of another claim, has paid the insurance proceeds with due diligence to the beneficiary of record and then allow the dilatory claimant to recovery a second time from the insurance company, the Courts would be performing an injustice of the highest sort and one which neither the law requires or our society desires. No insurance company would ever know when it had discharged its contractual obligation or whether it was solvent or not if years after paying the record beneficiary, without knowledge of a conflicting claim, the contract could be retroactively reformed without its knowledge and a stranger to the contract be thereby vested with a cause of action against it.

So that this Court will not be confused as to the particular holdings that Plaintiffs are petitioning to have reviewed, we think we should quote a portion of the ruling of the Court of Appeals for the Fifth Circuit, a copy of

which has been attached hereto, marked Exhibit "A", for the Court's convenience. We must do this because on Pages 8 and 9 of Plaintiffs' Brief, they have attempted to give their interpretation of the Court's holding and in so doing, it is evident that they did not properly construe the Court's opinion because of the lack of similarity between their interpretation and the actual holding. The Court held as follows:

> "Courts are called on to do some powerful divining at times. This complaint goes further than most. Here, the appellants want this Court to hold that the insured was not capable of forming an intention to change the beneficiary at the time of the divorce—but if he had been capable of forming such an intention, he would have changed the beneficiary and designated the plaintiffs as beneficiaries. Our license for divination does not allow us to go that far. Neither the divorce nor the insanity operate in themselves to change the terms of a contract. The defendant insurance company in good faith paid the proceeds in accordance with its obligations under its contract with the insured. It does not have to pay again on some theory that the contracts were changed retroactively—because they might have been changed, if the insured had been competent at the time of the divorce.
>
> "Payment in good faith to the beneficiary of record by the insurance company without knowledge of facts vitiating the claim will prevent a second recovery by another claimant. * * * If the plaintiffs have a remedy it is against the person who wrongfully collects the proceeds and not against the insurance company."

Once the facts are clearly presented, the above holding is easily understood but this is exactly what the Plaintiffs do not want. Plaintiffs are insisting to the Court, "Let's ignore the facts and get down to the equities."

Plaintiffs know that their alleged cause of action, just like other bats of the law, will only maintain itself in darkness for once the bright rays of truth and facts light up the area of the controversy, their cause of action will, like the bat, fly out the window.

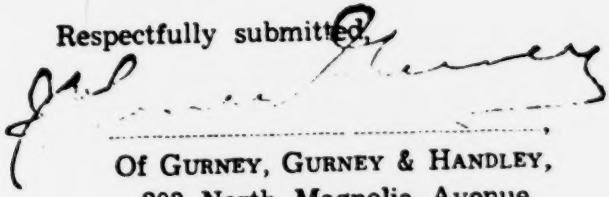
CONCLUSION.

The facts presented positively establish that the factual situation herein presented is unique to the Plaintiffs and probably has never existed before and will never exist again, but that if it should, there are established fundamentals of law presently existing which, when applied to these facts, will enable the Courts to properly and speedily deal with the same. While the factual situation is unique, the issues presented are neither unique nor substantial and even assuming that the Plaintiffs were in a position to prove each and every allegation contained in their Complaint and/or Amended Complaint, it is quite evident that they would have failed to prove a claim upon which relief could be granted.

Plaintiffs' only grounds for certiorari are based on the many equities which they envision are against Louella H. Stevens, but they are not suing Louella H. Stevens and between the Plaintiffs and Defendant there are no equities against the Defendant. It is respectfully submitted that the United States District Court and the Court of Appeals for the Fifth Circuit did not commit error and that no proper grounds for review have been presented by

the Plaintiffs and that this Petition should, therefore, be denied.

Respectfully submitted,



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I HEREBY CERTIFY that a copy hereof has been furnished by mail this 1st day of August, 1961, upon WALTER WARREN, ESQ., 212 North Fourth Street, Post Office Box 83, Leesburg, Florida, Attorney for Petitioners.

Attorney.

EXHIBIT A.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT.

No. 18441.

JEANNE S. WEED and SALLY ANNE DeLUCCIA,
Appellants,

versus

EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,
Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(March 27, 1961.)

Before RIVES, BROWN and WISDOM, Circuit Judges.

WISDOM, Circuit Judge: In 1947 and 1948 George Stevens purchased insurance policies from the Equitable Life Assurance Society, totaling $55,000. He designated the beneficiary as his "wife, Louella H. Stevens". In 1951 the insured was adjudged insane. In 1952, after having been restored to judicial sanity, Stevens executed a change of beneficiaries, designating as the primary beneficiary, his wife, Louella Stevens, and as contingent beneficiaries the two minor daughters of his marriage to Louella Stevens. In 1953 Stevens was again adjudged insane. In 1954 Louella Stevens divorced the insured in

Nevada on the ground of insanity. In 1955 the insured died. In due course the Equitable, having no notice of any dispute over the proceeds, paid the divorced wife the amounts required under Stevens's insurance policies. In 1957, the Florida courts set aside Stevens's will (executed in 1952) on the ground that the insured did not possess testamentary capacity to make a will.

Four years after the Equitable had paid the insurance proceeds to the beneficiary, Mrs. Stevens, in accordance with terms of its contract, two adult natural children of the insured sued the Equitable for the amount of the insurance. The theory of the complaint is that (1) the divorced wife was not entitled to the proceeds under the 1952 designation of beneficiary, because the insured was not mentally competent and (2) she has no right under the original designation, because she "treated [the insured] so abominably, stole his property, and kicked him out and divorced him, and the Court cannot assume the insured wanted her to have the proceeds of his insurance after divorce, because of such treatment and his mental inability to form such an intention." So, plaintiffs say, the proceeds should descend according to the Florida Statutes.

Courts are called on to do some powerful divining at times. This complaint goes further than most. Here, the appellants want this Court to hold that the insured was not capable of forming an intention to change the beneficiary at the time of his divorce—but if he had been capable of forming such an intention, he would have changed the beneficiary and designated the plaintiffs as beneficiaries. Our license for divination does not allow us to go that far. Neither the divorce nor the insanity operate *in themselves* to change the terms of a contract. The defendant insurance company in good faith paid the proceeds in accordance

with its obligations under its contract with the insured. It does not have to pay again on some theory that the contracts were changed retroactively—because they might have been changed, if the insured had been competent at the time of the divorce.

Payment in good faith to the beneficiary of record by the insurance company without knowledge of facts vitiating the claim will prevent a second recovery by another claimant. *Daniels* v. *Grand Lodge*, Ct. Civ. App. Tex., 1933, 62 S.W. 2d 548; *Avondale* v. *Sovereign Comp. W.O.W.*, Sup. Ct. Nebr., 1938, 279 N.W. 355; *Metropolitan Life Insurance Company* v. *Louisville Trust Company*, Ct. App., Ky., 1905, 89 S.W. 268; *Renick* v. *Mutual Life Insurance Company of New York*, Ct. App., Ky., 1907, 106 S.W. 310. If the plaintiffs have a remedy it is against the person who wrongfully collects the proceeds and not against the insurance company.

The judgment is AFFIRMED.